

रजिस्टर्ड नं० पी० 461.



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, बुधवार, 22 नवम्बर, 1972/1 अग्रहायण, 1894

GOVERNMENT OF HIMACHAL PRADESH

LAW DEPARTMENT

NOTIFICATION

Simla-2, the 22nd November, 1972

No. 6-27/69-LR.—The Himachal Pradesh Requisitioning and Acquisition of Immovable Property Ordinance, 1972 (Ordinance No. 7 of 1972) promulgated by the Governor, Himachal Pradesh, on the 22nd November, 1972, is hereby published in the Rajpatra, Himachal Pradesh, for the information of general public.

JOSEPH DINA NATH,
Deputy Secretary.

Ordinance No. 7 of 1972.

**THE HIMACHAL PRADESH REQUISITIONING AND
ACQUISITION OF IMMOVABLE PROPERTY
ORDINANCE, 1972**

Promulgated by the Governor of Himachal Pradesh in the Twenty-third Year of the Republic of India.

An Ordinance to provide for the requisitioning and acquisition of immovable property for the purposes of the State.

Whereas the Legislative Assembly of Himachal Pradesh is not session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

And whereas instruction of the President of India to promulgate the Ordinance, have been obtained;

Now, therefore, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Himachal Pradesh is pleased to promulgate the following Ordinance:—

Short title and extent.

1. (1) This Ordinance may be called the Himachal Pradesh Requisitioning and Acquisition of Immovable Property Ordinance, 1972.

(2) It extends to the whole of Himachal Pradesh.

Definitions.

2. In this Ordinance, unless the context otherwise requires:—

(a) “award” means any award of an arbitrator made under section 10;

(b) “competent authority” means any person or authority authorised by the Government, by notification in the Official Gazette to perform the functions of the competent authority under this Ordinance for such area as may be specified in the notification;

(c) “Government” means the Government of Himachal Pradesh;

(d) “landlord” means any person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account, or on account or on behalf or for the benefit, of any other person or as a trustee guardian or receiver for any other person, or who would so receive the rent or be entitled

- to receive the rent if the premises were let to a tenant;
- (e) "Official Gazette" means the Rajpatra, Himachal Pradesh;
- (f) the expression "person interested" in relation to any property includes all persons claiming or entitled to claim, an interest in the compensation payable on account of the requisitioning or acquisition of that property under this Ordinance;
- (g) "premises" means any building or part of a building and includes—
- (i) the garden, grounds and out-houses, if any, appertaining to such building or part of a building;
 - (ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof;
- (h) "prescribed" means prescribed by rules made under this Ordinance;
- (i) "property" means immovable property of every kind and includes any rights in or over such property;
- (j) "tenant" means any person by whom or on whose account rent is payable for any premises and includes such sub-tenants and other persons as have devired title under the tenant under any law for the time being in force.

3. (1) Where the competent authority is of the opinion that any property is needed or likely to be needed for any public purpose, being a purpose of the State, and that the property should be requisitioned, the competent authority,—

Power to
requisition
immovable
property.

- (a) shall call upon the owner or any other person who may be in possession of the property by notice in writing (specifying therein the purpose of the requisition) to show cause, within fifteen days of the date of the service of such notice on him, why the property should not be requisitioned; and
- (b) may, by order, direct that neither the owner of the property nor any other person shall, without permission of the competent authority dispose of, or structurally alter, the property or let it out to a

tenant until the expiry of such period, not exceeding two months, as may be specified in the order.

(2) If, after considering the cause, if any, shown by any person interested in the property, or in possession thereof, the competent authority is satisfied that it is necessary or expedient so to do, it may, by order in writing, requisition the property and may make such further orders as appear to it to be necessary or expedient in connection with the requisitioning:

Provided that no property or part thereof—

- (a) which is bona fide used by the owner thereof as the residence of himself or his family, or
- (b) which is exclusively used either for religious worship by the public or as a school, hospital, public library or an orphanage or for the purpose of accommodation of persons connected with the management of such place of worship or such school, hospital, library or orphanage,

shall be requisitioned:

Provided further that where the requisitioned property consists of premises which are being used as a residence by a tenant for not less than two months immediately preceding the date of the service of notice under sub-section (1), possession of the property shall not be taken unless the competent authority has provided such tenant with alternative accommodation which in its opinion is suitable.

Power to take possession of requisitioned property.

4. (1) Where any property has been requisitioned under section 3, the competent authority may, by notice in writing, order the owner as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within thirty days of the service of the notice.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may, for that purpose, use such force as may be necessary.

Rights over requisitioned property.

5. (1) All property requisitioned under section 3 shall be used for such purposes, as may be mentioned in the notice of requisition,

(2) Where any premises are requisitioned under section 3, the competent authority may order the landlord to execute such repairs as may be necessary and are usually made by landlords in that locality and as may be specified in the notice, within such reasonable time as may be mentioned therein and if the landlord fails to execute any repairs in pursuance of such order, the competent authority may cause the repairs specified in the order to be executed at the expense of the landlord and the cost thereof may, without prejudice to any other mode of recovery be deducted from the compensation payable to the landlord.

6. (1) The competent authority may at any time release from the requisition any property requisitioned under this Ordinance and shall, as far as possible, restore the property in as good a condition as it was when possession thereof was taken subject only to the changes caused by reasonable wear and tear and irresistible force:

Release
from requi-
sitioning.

Provided that where the purposes for which any requisitioned property was being used cease to exist, the competent authority shall, unless property is acquired under section 9, release that property, as soon as may be from requisition.

(2) Where any property is to be released from requisition, the competent authority may, after such inquiry, if any, as it may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of the property shall be given and such possession shall, as far as practicable, be given to the person from whom possession was taken at the time of the requisition or to the successors-in-interest of such person.

(3) The delivery of possession of the property to the person specified in an order under sub-section (2) shall be a full discharge of the Government from all liability in respect of the property, but shall not prejudice any rights in respect of the property which any other person may be entitled by due process of law to enforce against the person to whom possession of the property is given.

(4) Where any person to whom possession of any requisitioned property is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the competent authority, shall cause a notice declaring that the property is released from requisition to be affixed on some conspicuous part of the property and shall also publish the notice in the Official Gazette.

(5) When a notice referred to in sub-section (4) is published in the Official Gazette, the property specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof and the Government shall not be liable for any compensation or other claim in respect of the property for any period after the said date.

(6) Where any property requisitioned under this Ordinance or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was requisitioned by reason of fire, earthquake, tempest, flood or violence of an army or of a mob or other irresistible force, the requisition shall, at the option of the Government, be void:

Provided that the benefit of this sub-section shall not be available to the Government where the injury to such property is caused by any wrongful act or default of that Government.

Application
for release
from requisitioning.

7. (1) After a period of two years from the date of requisitioning of any property, the owner or any person interested in such property, may apply to the competent authority to release it from requisition:

Provided that such application may be made before the expiry of two years from the date of requisitioning of the property, if there have arisen circumstances which the owner or any person interested in the property could not have urged when given an opportunity to show cause under clause (a) of sub-section (1) of section 3.

(2) On receipt of an application under sub-section (1) the competent authority may, after calling for such information as may be found necessary from the owner or any person interested in the property or making such further inquiry as it may consider necessary, pass such order as it deems fit.

Further application
for release from
requisitioning.

8. After the application for release from requisition made under section 7 has been rejected by the competent authority and the appeal filed before the Government under section 13 has also been rejected, no further application for the release from requisition of property in question will be entertained by the competent authority till the expiry of a further period of two years:

Provided that another application may be made by the owner or any person interested in the property within two years of rejection of the first appeal if any further circumstances have

arisen which he could have not urged in his previous application.

9. (1) Where any property is subject to requisition the Government may, if it is of opinion that it is necessary to acquire the property for a public purpose, at any time acquire such property by publishing in the Official Gazette a notice to the effect that the Government has decided to acquire the property in pursuance of this section:

Power to
acquire re-
quisitioned
property.

Provided that before issuing such notice the Government shall call upon the owner of, or any other person who, in the opinion of the Government may be interested in, such property to show cause why the property should not be acquired; and after considering the cause, if any, shown by any person interested in the property and after giving the parties an opportunity of being heard, the Government may pass such orders as it deems fit.

(2) When a notice as aforesaid is published in the Official Gazette, the requisitioned property shall, on and from the beginning of the day on which the notice is so published, vest absolutely in the Government free from all encumbrances and the period of requisition of such property shall end.

(3) No property shall be acquired under this section except in the following circumstances, namely:—

(a) where any works have, during the period of requisition, been constructed on, in or over, the property wholly or partially at the expense of the Government and the Government decides that the value of, or the right to use, such works should be secured or preserved for the purposes of Government; or

(b) where the cost of restoring the property to its condition at the time of its requisition would, in the determination of the Government, be excessive and the owner declines to accept release from requisition of the property without payment of compensation for so restoring the property.

(4) Any decision or determination of the Government under sub-section (3) shall be final and shall not be called in question in any Court.

(5) For the purposes of clause (a) of sub-section (3) "works" includes buildings, structures and improvements of every description.

10. (1) Where any property is requisitioned or acquired under this Ordinance, there shall be paid compensation the amount of which shall be determined in the manner and in

Principles
and methods
of determin-
ing compen-
sation.

accordance with the principles hereinafter set out, that is to say—

- (a) where the amount of compensation be fixed by agreement, it shall be paid in accordance with such agreement;
 - (b) where no such agreement can be reached, the Government shall appoint as arbitrator a person, who is or has been, or is qualified for appointment as a Judge of a High Court;
 - (c) the Government may, in any particular case, nominate a person having expert knowledge as to the nature of the property requisitioned or acquired to assist the arbitrator and where such nomination is made, the person to be compensated may also nominate an assessor for the same purpose;
 - (d) at the commencement of the proceedings before the arbitrator, the Government and the person to be compensated shall state what in their respective opinion is a fair amount of compensation;
 - (e) the arbitrator shall, after hearing the dispute, make an award determining the amount of compensation which appears to him to be just and specify the person or persons to whom such compensation shall be paid; and in making the award, he shall have regard to the circumstances of each case and the provisions of sub-sections (2) and (3), so far as they are applicable;
 - (f) where there is any dispute as to the person or persons who are entitled to the compensation, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to compensation, he shall apportion the amount thereof amongst such persons;
 - (g) nothing in the Arbitration Act, 1940, shall apply to arbitrations under this section.
- (2) The amount of compensation for the requisitioning of any property shall consist of—

- (a) a recurring payment, in respect of the period of requisition of a sum equal to the rent which would have been payable for the use and occupation of the property, if it had been taken on lease for that period; and

- (b) such sum, or sums, if any, as may be found necessary to compensate the person interested for all or any of the following matters, namely:—
 - (i) pecuniary loss due to requisitioning;
 - (ii) expenses on account of vacating the requisitioned premises;
 - (iii) expenses on account of re-occupying the premises upon release from requisition; and
 - (iv) damages (other than normal wear and tear) caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition.

(3) The compensation payable for the acquisition of any property under section 9 shall be—

- (a) the price which the requisitioned property would have fetched in the open market, if it had remained in the same condition as it was at the time of requisitioning and been sold on the date of acquisition, or whichever is less;
- (b) twice the price which the requisitioned property would have fetched in the open market if it had been sold on the date of requisition.

(4) Where there are several persons interested in the compensation, it shall be lawful for the Government, either on its own motion, or on an application from any person interested to appoint the same or any other arbitrator to make an award or supplementary award in respect of the dispute.

11. The amount of compensation payable under an award shall, subject to any rules made under this Ordinance, be paid or given by the competent authority to the person or persons entitled thereto in such manner and within such time as may be specified in the award.

Payment of compensation.

12. (1) Any person aggrieved by an order of requisition made by the competent authority under sub-section (2) of section 3 may, within twenty-one days from the date of service of the order, prefer an appeal to the Government:

Appeals from orders of requisitioning.

Provided that the Government may entertain the appeal after the expiry of the said period of twenty-one days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1), the Government may, after calling for a report from the competent authority and giving an opportunity to the parties of being heard and after making such further inquiry, if any, as may be necessary, pass such orders as it thinks fit and the order of the Government shall be final.

(3) Where an appeal is preferred under sub-section (1), the Government may stay the enforcement of the order of the competent authority for such period and on such conditions as it thinks fit.

Appeal from
order of
competent
authority
rejecting
application
for release
from requis-
itioning.

13. (1) Any person aggrieved by an order made by the competent authority under sections 7 and 8 may, within twenty-one days from the date of service of the order, prefer an appeal to the Government:

Provided that the Government may entertain the appeal after the expiry of the said period of twenty-one days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section (1) the Government may, after calling for a report from the competent authority and after making such further inquiry as it may consider necessary, pass such orders as it deems fit and the orders of the Government shall be final.

Appeal from
awards in
respect of
compensa-
tion.

14. Any person aggrieved by an award of the arbitrator made under section 10 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the requisitioned or acquired property is situate:

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Competent
authority
and arbitra-
tor to have
certain pow-
ers of civil
courts.

15. The competent authority and the arbitrator appointed under section 10 while holding an inquiry, or as the case may be, arbitration proceedings, under this Ordinance shall have all powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;

- (d) requisitioning any public record from any court or office; and
- (e) issuing commissions for examination of witnesses.

16. The Government or the competent authority may, with a view to carrying out the purposes of section 3 or section 6, or section 9, or section 10, by order require any person to furnish to such officer, as may be specified in the order, such information in his possession as may be specified relating to any property which is requisitioned or acquired, or intended to be requisitioned or acquired, under this Ordinance.

Power to obtain information.

17. The competent authority or any officer, empowered in this behalf by such authority by general or special order, may enter and inspect any property for the purposes of determining whether, and if so, in what manner an order under this Ordinance should be made in relation to such property or with a view to securing compliance with an order made under this Ordinance.

Power to enter and inspect.

18. (1) Subject to the provisions of this section and any rules that may be made under this Ordinance, every notice or order issued or made under this Ordinance shall—

Service of notice and orders.

- (a) in the case of any notice or order of a general nature or affecting a class of persons be published in the Official Gazette;
- (b) in the case of any notice or order affecting an individual corporation or firm, be served in the manner provided for the service of summons in rule 2 of order XXIX or rule 3 of order XXX as the case may be, in the First Schedule of the Code of Civil Procedure, 1908;
- (c) in the case of any notice or order affecting an individual person (not being a corporation or firm) be served on such person—
 - (i) by delivering or tendering it to that person; or
 - (ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part on the premises which that person is known to have last resided or carried on business or personally worked for gain; or failing service by these means;
 - (iii) by post.

(2) Where the ownership of the property is in dispute or where the persons interested in the property are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Official Gazette, and where possible, by affixing a copy thereof on any conspicuous part of the property to which it relates.

Easement
not to be
disturbed.

19. No person interested in any property requisitioned or acquired under this Ordinance shall, without the previous written consent of the competent authority or except for the purpose of affecting repairs or complying with municipal requirement, wilfully disturb any convenience or easement attached to such property or remove, destroy or render un-serviceable anything provided for permanent use therewith or discontinue or cause to be discontinued any supply or service provided for the property.

Delegation
of powers.

20. (1) The Government may, by notification in the Official Gazette, direct that the powers exercisable by it or under this Ordinance shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by an officer subordinate to that Government.

(2) All notifications issued under sub-section (1) shall be laid, as soon as may be, before the Legislative Assembly.

Protection
of action
taken in
good faith.

21. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government or the competent authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any order made thereunder.

Bar of juris-
diction of
civil courts.

22. Save as otherwise expressly provided in this Ordinance no civil court shall have jurisdiction in respect of any matter which the competent authority or arbitrator is empowered by or under this Ordinance to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance.

Penalty for
offences.

23. Whoever contravenes any provision of this Ordinance, or any rule made thereunder, or any order made or direction

given under this Ordinance, or obstructs the lawful exercise of any power conferred by or under this Ordinance, shall be punishable with fine which may extend to one thousand rupees, and when the offence is a continuing breach, further fine which may extend to fifty rupees for every day after the first during which the offence continues.

24. The competent authority, every arbitrator and every officer empowered by the Government or the competent authority, while exercising any power or performing any duty under this Ordinance, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Certain persons to be public servants.

25. (1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

Power to make Rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the procedure to be followed by the competent authority in making inquiries under section 3 or section 6;
- (b) the procedure to be followed in arbitration proceedings and appeals under this Ordinance;
- (c) the principles to be followed in determining the amount of compensation, method of payment and rendition of such compensation;
- (d) the principles to be followed in apportioning the cost of proceedings before the arbitrator and on appeal under this Ordinance;
- (e) the manner of service of notices and orders;
- (f) rent and its recovery; and
- (g) any other matter which has to be or may be, prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however,

that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Validation
of certain
requisitions
and acquisi-
tion.

26. (1) All immovable property which purports to have been requisitioned by the Government for any public purpose, under any law in force prior to the commencement of this Ordinance, and which, immediately before such commencement, was used or occupied by the Government or by an officer or authority subordinate to that Government shall, as from the commencement of this Ordinance, be deemed to be property duly requisitioned under section 3 of this Ordinance, and every such requisition shall, notwithstanding any judgement, decree or order of any court, be deemed always to have been valid as if this Ordinance had been in force on and from the date of the requisition and the requisition had been duly made by a competent authority under this Ordinance, and all the provisions of this Ordinance shall apply accordingly:

Provided that all agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Ordinance and in force immediately before such commencement shall be valid and shall be deemed always to have been valid and shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement.

(2) Every acquisition of immovable property purporting to have been made before the commencement of this Ordinance by the Government for any public purpose, under any enactment for the time being in force in the State and which, immediately before such commencement was used or occupied by the Government or by an officer or authority subordinate to that Government shall, notwithstanding any defect in, or invalidity of, the enactment or order under which the acquisition was made, be deemed for all purposes to have been validly made as if the provisions of the said enactment or order had been included and enacted in this section and this section had been in force on and from the date of acquisition.

Power to
recover rent
or damages
in respect
of requisit-
ioned prop-
erty as ar-
rears of land
revenue.

27. (1) Subject to any rules that may be made in this behalf by the Government any sum due by way of rent in respect of any requisitioned property which is in arrear may be recovered by the competent authority from the person liable to pay the same in the same manner as an arrear of land revenue.

(2) Where any person is in unauthorised occupation of any requisitioned property, the competent authority may, in the prescribed manner, assess such damages on account of the use and occupation of the said property as it thinks fit and may, by notice served by post or in such other manner, as may be prescribed by rules made in this behalf, order that person to pay the damages within such time, as may be specified in the notice.

(3) If any person refuses or fails to pay the damages within the time specified in the notice under sub-section (2), the damages may be recovered in the same manner as an arrear of land revenue.

28. (1) The East Punjab Requisitioning of Immovable Property (Temporary Powers) Act, 1947, as in force in areas comprised in Himachal Pradesh immediately before the 1st November, 1966, is hereby repealed.

Repeal and Savings.

(2) For the removal of doubts, it is hereby declared that any property which immediately before such repeal was subject to requisition under the provisions of the said Act shall, on the commencement of this Ordinance, be deemed to be property requisitioned under section 3 of this Ordinance, and all the provisions of this Ordinance shall apply accordingly:

Provided that—

- (a) all agreements and awards for the payment of compensation in respect of any such property for any period of requisition before the commencement of this Ordinance and in force immediately before such commencement, shall continue to be in force and shall apply to the payment of compensation in respect of that property for any period of requisition after such commencement;
- (b) anything done or any action taken (including any orders, notifications or rules made or issued) in exercise of the powers conferred by or under the said Act shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been done or taken in exercise of the powers conferred by or under this Ordinance as if this Ordinance was

in force on the day on which such thing was done or action was taken.

S. CHAKRAVARTI,
Governor.

SIMLA:

The 22nd November, 1972.

B. D. SHARMA,
Secretary.